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COMMITTEE ON THE PEACEFUL
USES OF OUTER SPACE

# REPORT OF THE LEGAL SUBCOMMITTEE ON THE WORK OF ITS THIRTY-FIFTH SESSION (18-28 MARCH 1996)

CONTENTS


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| INTRODUCTION | | 1 - 19 | 3 |
| I. | QUESTION OF REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (AGENDA ITEM 3) | 20 - 26 | 7 |
| II. | MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (AGENDA ITEM 4) | 27 - 35 | 8 |
| III. | CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (AGENDA ITEM 5) | 36 - 42 | 9 |
| IV. | OTHER MATTERS (AGENDA ITEM 6) | 43 - 52 | 10 |
| V. | INFORMAL CONSULTATIONS ON NEW ITEMS FOR THE AGENDA | 53 - 57 | 11 |


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*Page*

*Annexes*

I. Report of the Chairman of the Working Group on agenda item 4 (matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union) ..... 13

II. Report of the Chairman of the Working Group on agenda item 5 (consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries) ..... 19

III. Documents annexed to the report ..... 28

A. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union ..... 28

Working paper: Colombia (A/AC.105/C.2/L.200 and Corr.1 of 15 March 1996) ..... 28

B. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries ..... 32

Working paper: Germany and France (A/AC.105/C.2/L.197/Rev.1 of 19 March 1996) ..... 32

C. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries ..... 34

Working paper: Brazil, Chile, Colombia, Cuba, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela (A/AC.105/C.2/L.182/Rev.3 of 22 March 1996) ..... 34

D. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries ..... 36

Working paper submitted by the Chairman of the Working Group (A/AC.105/C.2/L.202 of 27 March 1996) ..... 36

E. Informal consultations on new items for the agenda — unofficial background note by the Czech Republic, "Review of existing norms of international law applicable to space debris" ..... 38

F. Informal consultations on new items for the agenda — unofficial background note by Chile, "Comparison of the norms of space law and those of international environmental law" ..... 39

G. Informal consultations on new items for the agenda — unofficial background note by Mexico, "Review of the status of the five international legal instruments on outer space" ..... 40

# INTRODUCTION

## Opening of the session

1. The Legal Subcommittee held its thirty-fifth session at the United Nations Office at Vienna from 18 to 28 March 1996 under the chairmanship of Mr. Václav Mikulka (Czech Republic).

2. At its opening, 589th meeting, the Chairman made a statement briefly describing the work to be undertaken by the Subcommittee at its current session. A summary of the Chairman's statement is contained in document A/AC.105/C.2/SR.589.

## Adoption of the agenda

3. At the opening meeting, the Subcommittee adopted the following agenda:

1. Opening of the session.

2. Statement by the Chairman.

3. Question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

4. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

5. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

6. Other matters.

## Attendance

4. Representatives of the following States members of the Subcommittee attended the session: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, Egypt, France, Germany, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kazakstan, Lebanon, Mexico, Morocco, Nigeria, Pakistan, Philippines, Poland, Republic of Korea, Romania, Russian Federation, South Africa, Spain, Sudan, Sweden, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela and Viet Nam.

5. Representatives of the following specialized agencies and international organizations attended the session: International Telecommunication Union (ITU), International Atomic Energy Agency (IAEA), European Space Agency (ESA) and International Astronautical Federation (IAF).

6. The Chairman informed the Subcommittee at its 589th and 590th meetings that requests to participate in meetings of the Subcommittee had been received from Malaysia, Saudi Arabia, Slovakia, Thailand and the League of Arab States. The Subcommittee agreed that, since the granting of observer status was the

prerogative of the Committee on the Peaceful Uses of Outer Space, the Subcommittee could take no formal decision on the matter, but that the representatives of Malaysia, Saudi Arabia, Slovakia, Thailand and the League of Arab States might attend the formal meetings of the Subcommittee and could direct requests for the floor to the Chairman, should they wish to make statements.

7. A list of representatives of States members of the Subcommittee, States not members of the Subcommittee, specialized agencies and other organizations attending the session, and of the secretariat of the Subcommittee, is contained in document A/AC.105/C.2/INF.28.

**Organization of work**

8. In accordance with decisions taken at its opening meeting, the Subcommittee organized its work as follows:

(a) The Subcommittee recalled its recommendation, endorsed by the Committee on the Peaceful Uses of Outer Space,[1] that the yearly rotation of the order of consideration of substantive agenda items 3, 4 and 5 on a permanent basis (as recommended by the Committee)[2] should be suspended at the present session of the Subcommittee and that it should consider the three substantive items on its agenda (see paragraph 3 above) in the same order as in 1995: items 4, 5 and 3. However, acting in a flexible manner and in order to organize its work in an optimum way, the Subcommittee agreed to consider those items in the following order: items 4, 3 and 5;

(b) In accordance with the recommendation endorsed by the Committee on the Peaceful Uses of Outer Space,[3] the Subcommittee agreed to suspend, for the present session, its Working Group on agenda item 3;

(c) It re-established its Working Group on agenda item 4, open to all members of the Subcommittee, and agreed that Mr. Eugenio Curia, the representative of Argentina, should serve as its Chairman;

(d) It re-established its Working Group on agenda item 5, open to all members of the Subcommittee, and agreed that Mr. Raimundo González, the representative of Chile, should serve as its Chairman;

(e) In accordance with the agreement reached by the Subcommittee at its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1, para. 54), the Chairman conducted open-ended, informal consultations with all members of the Subcommittee with a view to identifying, on the basis of consensus, a subject or a list of subjects that might be considered, in the future, for inclusion in the agenda of the Subcommittee;

(f) It began its work each day with a plenary meeting to hear delegations wishing to address the Subcommittee, and then adjourned and reconvened, when appropriate, as a working group, or began its work as a working group.

9. The following delegations participated in the general exchange of views: Austria, Brazil, China, Cuba, Ecuador, Germany, India, Indonesia, Italy, Japan, Morocco, Nigeria, Romania, Russian Federation, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, and United States of America, as well as ITU and IAF. The views expressed by those delegations are summarized in documents A/AC.105/C.2/SR.589-592.

10. The Working Group on agenda item 4 held seven meetings. The Working Group on agenda item 5 held five meetings.

11. The chairmen of the working groups reported to the Subcommittee at its 597th meeting, on 28 March (see annexes I and II to the present report). The Subcommittee took note with appreciation of the reports and of the work done in the working groups.

12. At the opening meeting, the Chairman made a statement concerning the utilization of conference services by the Subcommittee. He drew attention to the importance that the General Assembly and the Committee on Conferences attached to the effective utilization of conference services by all United Nations deliberative bodies. In view of that, the Chairman proposed, and the Subcommittee agreed, that the following measures, similar to those adopted in the past, should also be adopted at the current session of the Subcommittee:

(a) The Subcommittee and its working groups should begin their meetings punctually at the scheduled time, even if there was no quorum (16 members);

(b) The Office of Conference Services should be notified as early as possible whenever it was anticipated that any of the services usually provided were not going to be required. If possible, prior notice of 24 hours should be given;

(c) Informal consultations (i.e. outside the auspices of the Subcommittee and its working groups) should not interrupt the work of the Subcommittee or its working groups;

(d) The general rule for annexing documents to the report of the Subcommittee should be that normally any document would be annexed, if at all, only once, to the report of the session in which it was first submitted, but not to later reports;

(e) The Subcommittee should not have plenary meetings in the afternoons when the agenda items on definition of outer space/geostationary orbit and on outer space benefits were considered. Instead, the working groups on those items should meet;

(f) Delegations wishing to speak at the next plenary meeting of the Subcommittee should inform the Chairman of their intention before the adjournment of the previous plenary meeting. If no such information was received by the Chairman, the next plenary meeting of the Subcommittee should be cancelled and a working group should meet instead;

(g) The Subcommittee and/or working group meetings could be cancelled on an ad hoc basis if informal consultations were required, instead of planned cancellations of blocks of meetings, which had been employed in the past;

(h) There should be the possibility of holding informal meetings and consultations outside the work schedule of the Subcommittee, and all informal meetings and consultations of the Subcommittee and its working groups held during the work schedule of the Subcommittee should be provided with interpretation services;

(i) The Chairman should set a deadline for closing lists of speakers for the general exchange of views and for each of the substantive agenda items;

(j) The Subcommittee and its working groups should begin their morning meetings at 10 a.m. with the understanding that that did not relate to and did not affect the question of the length of the session;

(k) When adopting and following the schedule of work, the Subcommittee should exercise flexibility in the allocation of time for consideration of items on its agenda. If the time previously allocated for the consideration of an item was not fully used or was unlikely to be used, the Subcommittee should seek, on the basis of consensus, to use the time for the consideration of other items on the agenda or, as the case might be, consider the possibility of concluding the session ahead of the scheduled date. The adoption of that measure was without prejudice to the position of various delegations concerning the duration of the sessions of the Subcommittee.

13. The Subcommittee agreed that a similar flexible organization of work as agreed upon at the current session would serve as the basis for organizing the work of its thirty-sixth session.

14. At its 596th meeting, on 27 March, the Chairman proposed, and the Subcommittee agreed, to conclude the session ahead of time in accordance with the measure contained in paragraph 12 (k) above. Specifically, the Subcommittee decided to conclude its work on 28 March. The Subcommittee agreed that that reduction was without prejudice to the length of its future sessions.

15. The Subcommittee agreed that, in view of its recommendation to suspend, for another year, the work of its Working Group on agenda item 3, as contained in paragraph 25 below, the following additional measures concerning organization of work could be adopted for the next session of the Subcommittee:

(a) At the 1997 session, less time should be allocated for consideration of agenda item 3 than for items 4 and 5;

(b) The recommendation of the Committee on the Peaceful Uses of Outer Space that the Legal Subcommittee, on a permanent basis, should rotate each year the order of consideration of substantive agenda items[2] should be suspended for the 1997 session and the substantive agenda items should be considered at that session in the following order: items 4, 5 and 3.

The adoption of the above measures is without prejudice to the positions of various delegations concerning the duration of the sessions of the Subcommittee.

16. In the course of the general exchange of views, some delegations expressed the view that an international agreement on the problem of space debris might be necessary in the future. Some delegations noted with satisfaction that the Scientific and Technical Subcommittee had continued its consideration of space debris as a priority item at its session in 1996 and had begun its multi-year work plan in order to advance in its consideration of that agenda item. Some delegations also expressed the view that it was advisable for the Legal Subcommittee to begin consideration of legal issues relating to space debris. Other delegations expressed the view that the Scientific and Technical Subcommittee needed to be given sufficient time and opportunity to adequately assess the problem of space debris appropriately before the issue could be considered by the Legal Subcommittee.

17. The Legal Subcommittee noted with satisfaction that a symposium entitled "Protection of the space environment", organized by the International Institute of Space Law and the European Centre for Space Law, both based in Paris, was held at the close of the afternoon meeting of the Legal Subcommittee on 18 March 1996.

18. The Subcommittee held a total of nine meetings. The views expressed at those meetings are summarized in documents A/AC.105/C.2/SR.589-597.

19. At its 597th meeting, on 28 March, the Subcommittee adopted the current report and concluded the work of its thirty-fifth session.

## I. QUESTION OF REVIEW AND POSSIBLE REVISION OF THE PRINCIPLES RELEVANT TO THE USE OF NUCLEAR POWER SOURCES IN OUTER SPACE (AGENDA ITEM 3)

20. The Chairman made an introductory statement on agenda item 3 at the 592nd meeting, on 21 March 1996.

21. The Chairman drew attention to the fact that the General Assembly, in its resolution 50/27, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee should continue its consideration of the question of review and possible revision of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space.

22. The Legal Subcommittee noted that the subject of the use of nuclear power sources in outer space had been considered by the Scientific and Technical Subcommittee at its thirty-third session, in 1996, as reflected in the report of that Subcommittee (A/AC.105/637, paras. 69-81). In particular, the Legal Subcommittee noted that the Scientific and Technical Subcommittee had agreed that, at the present time, revision of the Principles was not warranted (A/AC.105/637, para. 70).

23. As mentioned in paragraph 8 above, the Legal Subcommittee, at its 589th meeting, decided not to re-establish its Working Group on agenda item 3.

24. The Legal Subcommittee agreed that, at the present time, revision of the Principles was not warranted and that therefore it should not open discussion of that item during its current session.

25. The Legal Subcommittee also agreed that, at its thirty-sixth session, consideration by the Working Group on agenda item 3 of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space should again be suspended for one year, pending the results of the work in the Scientific and Technical Subcommittee, without prejudice to the possibility of reconvening its Working Group on that item if, in the opinion of the Legal Subcommittee, sufficient progress was made in the Scientific and Technical Subcommittee at its thirty-fourth session, in 1997, to warrant the reconvening of the Working Group.

26. The Legal Subcommittee agreed that that item should be retained on its agenda to give delegations an opportunity to discuss it in plenary meetings.

## II. MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (AGENDA ITEM 4)

27. The Chairman made an introductory statement on agenda item 4 at the 589th meeting, on 18 March 1996. He referred to the work of the Subcommittee at its thirty-fourth session, in 1995.

28. The Chairman drew attention to the fact that the General Assembly, in its resolution 50/27, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union.

29. The Legal Subcommittee noted that the subject of the geostationary orbit had been under consideration in the Scientific and Technical Subcommittee at its thirty-third session, in 1996, as reflected in the report of that Subcommittee (A/AC.105/637, paras. 153-160).

30. The Legal Subcommittee had before it working papers submitted at its previous sessions under that agenda item. The Subcommittee also had before it a working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1), submitted at its current session by the delegation of Colombia and set out in annex III, section A, of the present report.

31. At its thirty-fourth session, the Legal Subcommittee had finalized the text of a questionnaire on possible legal issues with regard to aerospace objects (A/AC.105/607 and Corr.1, annex I, appendix) and had agreed that the purpose of the questionnaire was to seek the preliminary views of States members of the Committee on the Peaceful Uses of Outer Space on various issues relating to aerospace objects (A/AC.105/607 and Corr.1, para. 38). At its current session, the Subcommittee had before it a document entitled "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States" (A/AC.105/635 and Add.1 and 2).

32. The views expressed by delegations during the debate on agenda item 4 are contained in summary records A/AC.105/C.2/SR.589-592.

33. As mentioned in paragraph 8 above, the Subcommittee, at its 589th meeting, re-established its Working Group on agenda item 4 under the chairmanship of Mr. Curia, the representative of Argentina.

34. At the 597th meeting, on 28 March, the Chairman of the Working Group reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex I to the present report.

35. The Subcommittee endorsed the recommendations of the Working Group that the Secretariat should encourage those States members of the Committee on the Peaceful Uses of Outer Space who wished to submit replies to do so as early as possible; that the Secretariat should prepare in time for the thirty-sixth session of the Legal Subcommittee a comprehensive analysis of the replies to the questionnaire that had been received, in order to assist the Working Group in its deliberations; and that the Secretariat, in cooperation

with the ITU secretariat, should provide, for the next session of the Working Group, an analysis of the compatibility of the approach contained in working paper A/AC.105/C.2/L.200 and Corr.1 with the existing rules and procedures of ITU relating to the use of the geostationary orbit.

## III. CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES (AGENDA ITEM 5)

36. The Chairman made an introductory statement on agenda item 5 at the 594th meeting, on 25 March 1996. He referred to the work of the Subcommittee at its thirty-fourth session, in 1995.

37. The Chairman drew attention to the fact that the General Assembly, in its resolution 50/27, had endorsed the recommendation of the Committee on the Peaceful Uses of Outer Space that the Subcommittee, taking into account the concerns of all countries, particularly those of developing countries, should continue, through its working group, its consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries.

38. The Subcommittee had before it a working paper entitled "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries" (A/AC.105/C.2/L.182/Rev.3), submitted at its current session by the delegations of Brazil, Chile, Colombia, Cuba, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela. The Subcommittee also had before it a working paper entitled "Declaration on international cooperation in the exploration and use of outer space for the benefit and in the interests of all States, taking into particular account the needs of developing countries" (A/AC.105/C.2/L.197/Rev.1), submitted at its current session by the delegations of France and Germany. Those working papers are set out in annex III, sections B and C, of the present report. In addition, the Subcommittee had before it an informal working paper entitled "Declaration of principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes for the benefit and in the interests of all States, taking into particular account the needs of developing countries" (A/AC.105/C.2/1995/CRP.5, as amended), submitted to the Subcommittee at its thirty-fourth session by the Chairman of the Working Group on agenda item 5. The informal working paper represented a merger based on the texts of working papers A/AC.105/C.2/L.182/Rev.2 and A/AC.105/C.2/L.197, with additional language from the Chairman. The informal working paper is set out as an appendix to annex II of the report of the Legal Subcommittee on its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1).

39. The views expressed by delegations during the debate on agenda item 5 are contained in summary records A/AC.105/C.2/SR.594-596.

40. As mentioned in paragraph 8 above, the Subcommittee, at its 589th meeting, re-established its Working Group on agenda item 5 under the chairmanship of Mr. González, the representative of Chile.

41. The Subcommittee took note of a working paper (A/AC.105/C.2/L.202), submitted by the Chairman of the Working Group on agenda item 5 and containing a consolidated text produced by the sponsors of working papers A/AC.105/C.2/L.182/Rev.3 and A/AC.105/C.2/L.197/Rev.1 as a result of extensive informal

consultations. This working paper, as revised by the Chairman on the basis of the debate in the Working Group, is set out in annex III, section D, of the present report.

42. At the 597th meeting, on 28 March, the Chairman of the Working Group on agenda item 5 reported to the Subcommittee. The Subcommittee took note with appreciation of the report, which is set out in annex II to the present report.

## IV. OTHER MATTERS (AGENDA ITEM 6)

### Records of the Legal Subcommittee

43. In accordance with a recommendation made by the Committee on the Peaceful Uses of Outer Space at its thirty-eighth session, in 1995,[4] and pursuant to the request of the General Assembly in its resolution 50/27, paragraph 12, the Subcommittee reviewed its requirement for summary records with a view to determining whether it might be possible to utilize verbatim (unedited) transcripts at its subsequent sessions and to consider under what circumstances there might be a need to revert to summary records should a decision be taken to utilize verbatim (unedited) transcripts.

44. As a result of discussions held, the Subcommittee recommended that, beginning with its thirty-sixth session, in 1997, it should be provided with verbatim (unedited) transcripts of its sessions in lieu of summary records.

45. The view was expressed that once the above-mentioned recommendation was approved by the Committee on the Peaceful Uses of Outer Space and the General Assembly, it should be reflected appropriately in the relevant section of the United Nations budget.

### Working methods of the Legal Subcommittee

46. The improvements in the working methods of the Legal Subcommittee achieved through the flexible approach to its work schedule were generally recognized. Some delegations, however, expressed the view that further improvements were necessary. Some of those delegations believed that the work schedule of the Subcommittee should be further rationalized following the example of other United Nations bodies meeting at Vienna. The view was also expressed that the scheduled length of each session of the Subcommittee should be two weeks and that, if necessary, the session could be extended on an ad hoc basis.

47. Other delegations opposed the reduction of the duration of sessions of the Legal Subcommittee, regarding such a reduction as unnecessary, particularly in view of the flexible measures applied in the work of the Subcommittee. They believed that the consideration of any possible reduction of the duration of the sessions of the Legal Subcommittee should not detract from the consideration of substantive new items that were currently being considered by the Subcommittee or that could be placed on its agenda in the future. Those delegations also expressed the view that a thorough examination of the possibility of adding new items to the agenda should be undertaken before taking any decision on reducing the duration of the sessions of the Legal Subcommittee.

48. The view was expressed that, while some perhaps believed that in the future activities in outer space would increasingly be regulated by "market forces", intergovernmental regulation of outer space activities and the development of outer space law would continue to be of paramount importance and that, therefore, the role of the Legal Subcommittee should be strengthened and the question of the duration of the sessions of the Subcommittee should be approached with that in mind.

49. Some delegations, while noting that progress had been made in the application of flexible measures of work at the current session, expressed the view that the Committee on the Peaceful Uses of Outer Space should give due consideration to the views expressed by various delegations at the current session of the Legal Subcommittee with a view to further improving working methods of the Committee and its subsidiary bodies. In particular, those delegations believed that consideration should be given to the proposals of adopting a multi-year plan for the work of the Committee, of avoiding scheduling sessions of the Legal Subcommittee simultaneously with other bodies meeting at Vienna, and of having simultaneous plenary and working group meetings. In reply, the view was expressed that, while some of the above-mentioned proposals were beyond the competence of the Subcommittee and even the United Nations, some of the others could more appropriately be considered by the Committee, and still other proposals, such as having simultaneous plenary and working group meetings, would lead to practical difficulties for delegations consisting of only one representative.

50. Some delegations expressed the view that, while the Legal Subcommittee had perhaps gone as far as reasonably possible in rationalizing its methods of work, further improvements in the overall organization of work of the Committee on the Peaceful Uses of Outer Space and its subsidiary bodies might still be possible and desirable, and that that subject should be properly addressed by the Committee at its thirty-ninth session, in 1996.

51. In summing up the debate on agenda item 6, the Chairman expressed the view that the discussion had been useful and had assisted in providing a better understanding of the positions of various delegations. He noted that some of the ideas expressed at the current session under the agenda item were already being considered by the Working Group of the Whole established by the Committee on the Peaceful Uses of Outer Space to examine the working methods of the Committee and its subsidiary bodies.

52. The views expressed by delegations during the debate on agenda item 6 are contained in summary records A/AC.105/C.2/SR.593 and 595.

## V. INFORMAL CONSULTATIONS ON NEW ITEMS FOR THE AGENDA

53. In accordance with the recommendation of the Legal Subcommittee contained in paragraph 54 of the report on its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1), the Chairman of the Subcommittee conducted informal open-ended consultations, with all members of the Subcommittee, with a view to identifying, on the basis of consensus, a subject or a list of subjects that might be considered, in the future, for inclusion in the agenda of the Subcommittee.

54. During those consultations the following items proposed by some delegations at the thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1, para. 47), for possible inclusion in the agenda of the Subcommittee at its future sessions were discussed:

(a) Status of the five outer space treaties;

(b) Commercial aspects of space activities (e.g. property rights, insurance and liability);

(c) Review of existing norms of international law applicable to space debris;

(d) Legal aspects of space debris;

(e) Comparative review of the principles of international space law and international environmental law.

55. In addition, the following ideas concerning the agenda of the Legal Subcommittee, contained in the annex to the report of the Committee on the Peaceful Uses of Outer Space on its thirty-seventh session, in 1994,[5] were discussed:

(a) Possibility of establishing, through consensus, a working agenda, comprised of items upon which substantive progress is possible;

(b) Possibility of separating the issue on definition and delimitation of outer space from the issue of the character and utilization of the geostationary orbit.

As a result of the discussion, it was felt that it was not possible to reach a consensus on those two ideas. It was agreed that further discussion on those ideas was not necessary.

56. With regard to the proposals contained in paragraph 54 (a), (c) and (e) above, the delegations of Mexico, the Czech Republic and Chile, respectively, submitted informal background notes explaining their proposals as recommended by the Legal Subcommittee at its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1, para. 55). The proposals are reproduced in annex III, sections E, F and G, of the present report.

57. At the 597th meeting, on 28 March, the Chairman reported on the results of the informal consultations.

**Notes**

[1] *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/50/20), para. 189.

[2] *Ibid., Forty-fifth Session, Supplement No. 20* (A/45/20), para. 143.

[3] *Ibid., Fiftieth Session, Supplement No. 20* (A/50/20), para. 188.

[4] *Ibid.*, para. 181.

[5] *Ibid., Forty-ninth Session, Supplement No. 20* (A/49/20).

*Annex I*

# REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 4 (MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION)

1. On 18 March 1996, the Legal Subcommittee re-established its Working Group on agenda item 4.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1), which contained, in annex I, the report of the Chairman of the Working Group at that session. The Working Group also had before it the report of the Scientific and Technical Subcommittee on the work of its thirty-third session, in 1996 (A/AC.105/637), which considered, in chapter VII, *inter alia*, the subject of the physical nature and technical attributes of the geostationary orbit.

3. The following documents, submitted at previous sessions and at the current session of the Legal Subcommittee, were referred to in the course of the discussion: "Questions concerning the legal regime for aerospace objects", submitted to the Subcommittee at its thirty-first session by the delegation of the Russian Federation (A/AC.105/C.2/L.189); "Geostationary satellite orbit", submitted to the Subcommittee at its thirty-second session by the delegation of Colombia (A/AC.105/C.2/L.192); "Questionnaire on possible legal issues with regard to aerospace objects" (A/AC.105/C.2/1995/CRP.3/Rev.3), reproduced in the appendix of annex I to the report of the Subcommittee (A/AC.105/607 and Corr.1); and "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States" (A/AC.105/635 and Add.1 and 2).

4. The Working Group also had before it a working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1), submitted by the delegation of Colombia to the Subcommittee at its current session and set out in annex III, section A, of the report of the Subcommittee.

5. On the question of the organization of its work, pursuant to a recommendation by the Chairman, the Working Group agreed that each aspect of the agenda item, namely, the definition and delimitation of outer space, on the one hand, and the geostationary orbit, on the other, should be discussed separately by the Working Group.

6. The views expressed in the discussions of the Working Group are summarized below.

## The definition and delimitation of outer space

7. At the commencement of the debate, the Chairman of the Working Group referred to the document "Questionnaire on possible legal issues with regard to aerospace objects: replies from Member States" (A/AC.105/635 and Add.1 and 2). The Chairman suggested that, while delegations were free to address any aspect of the definition and delimitation of outer space, it might be useful if they could comment on the replies to the questionnaire that had been received, in order to further the work of the Working Group on that subject.

8. In response to a request made by some delegations, the Secretariat provided the Working Group with a brief overview of the replies received.

9. Some delegations expressed the view that all members of the Committee on the Peaceful Uses of Outer Space should be encouraged to submit more promptly their replies to the questionnaire in the interests of attaining progress in the work on that subject.

10. Some delegations expressed the view that the Working Group should study the replies to the questionnaire with a view to identifying possible areas of agreement. The Chairman of the Working Group noted that there had been few replies to make such an identification meaningful. The Chairman suggested, and the Working Group agreed, that it should undertake a preliminary question-by-question analysis of the replies.

11. Some delegations expressed the view that the whole issue of "definition and delimitation" was of paramount interest and importance for States and that a "responsible approach" and/or a "cautious approach" should govern the conduct of Governments when tackling the issue.

12. The view was expressed that there was no reason why replies to the questionnaire were necessary at the present time; that, in its current form, the questionnaire reflected the contradictions and uncertainties of the previous debate on the subject; that the questions were presented in an ambiguous manner and that did not serve to clarify the issue; that the questionnaire in its present form could revive the unproductive debate on the direct and topographical or indirect and functional approach to the definition and delimitation of outer space; and that such an examination of legal issues with regard to aerospace objects inevitably questioned the foundation of the law of outer space. One delegation also expressed the view that it supported the functional approach to the definition and delimitation of outer space, but that aerospace objects did not necessarily lend themselves exclusively to the functional approach.

13. The view was expressed that there was no practical or legal need to pursue the debate on a delimitation of outer space and that the questionnaire on aerospace objects in its present form was unnecessary, premature and would raise further contentious issues and was unlikely to bring about any consensus results. In the view of that delegation the debate should therefore not be continued.

**Question 1**

14. Some delegations expressed the view that the definition of an aerospace object given in question 1 was acceptable for working purposes but needed further refinement and clarification. The view was expressed that the notion "for a certain period of time" currently contained in question 1 should be clarified. Some delegations expressed the view that in such a definition, it should be made clear whether or not it included space debris. Some delegations expressed the view that the definition should provide only for functional, man-made objects as opposed to space debris or natural objects. Those delegations also expressed the view that the definition should take into consideration ballistic properties that govern the movements of aerospace objects in outer space. The view was expressed that in a working definition it would currently be possible to define the movement of an aerospace object through, and its presence in time in, outer space and that, in the future, additional criteria might be added. The view was expressed that the definition should also take into consideration legal elements contained in the Convention on International Liability for Damage Caused by Space Objects (General Assembly resolution 2777 (XXVI), annex) and the Convention on Registration of Objects Launched into Outer Space (General Assembly resolution 3235 (XXIX), annex) and other pertinent space law treaties related to that matter.

15. Some delegations expressed the view that the Scientific and Technical Subcommittee should first study the technical prerequisites of the question and that the Legal Subcommittee could then proceed in its work. The view was expressed that the questionnaire should also be sent to the International Civil Aviation Organization for its input on the matter.

16. The view was expressed that although the term "aerospace object" had been used in legal literature, the term "aerospace systems" might be more appropriate. In reply, the view was expressed that it would be useful to refer to terms used in legal and technical literature such as "space transportation systems" rather than introducing new terms. In reply to that, the view was expressed that the term "space transportation systems" as used in the report of the Committee on the Peaceful Uses of Outer Space and its Scientific and Technical Subcommittee had a wider meaning, covering both the transportation systems of the Space Shuttle type and the usual rocket carriers. Therefore, that term would not be appropriate for describing the hybrid systems that might be used for both air flight and missions in outer space.

**Question 2**

17. Some delegations believed that different air and space law regimes should apply to an aerospace object depending on where it was located at any given time. The view was expressed that it was recognized in international law that every State had complete and exclusive sovereignty over the airspace above its territory and that although a spatial boundary between airspace and outer space had yet to be established, it could be said that a functional boundary had been generally acquiesced upon since no State had objected to flights of satellites over its territory. That delegation also expressed the view that overlapping air and space law regimes might have to be applied to the flight of aerospace objects and that the registration and control of such objects might be recognized by the functional duality of both airspace and outer space.

**Question 3**

18. The view was expressed that there was a need for two separate sets of rules, one for craft travelling through airspace and the other for craft travelling through outer space.

**Question 4**

19. The view was expressed that aerospace objects should be considered as aircraft while in airspace and as spacecraft while in outer space and that the only distinction should be with regard to an aerospace object destined to operate in outer space and passing through airspace only during launching and landing.

**Question 9**

20. The view was expressed that the rules concerning the registration of objects launched into outer space were applicable to aerospace objects and that such objects could be subject to two different registration regimes depending on their purpose and use.

21. Some delegations expressed the hope that, by the thirty-sixth session of the Legal Subcommittee, more replies to the questionnaire would have been received from States. The Working Group recommended that the Secretariat should encourage those States members of the Committee on the Peaceful Uses of Outer Space who wished to submit replies to do so as early as possible.

22. The Working Group recommended that the Secretariat should prepare, in time for the thirty-sixth session of the Legal Subcommittee, a comprehensive analysis of the replies to the questionnaire that had been received, in order to assist the Working Group in its deliberations.

**The geostationary orbit**

23. The Chairman of the Working Group recalled that at a number of its previous sessions, the Legal Subcommittee considered a working paper entitled "Geostationary satellite orbit" (A/AC.105/C.2/L.192, reproduced in annex III, section A, of the report of the Legal Subcommittee on the work of its thirty-fourth session (A/AC.105/607 and Corr.1)), submitted by the delegation of Colombia. He noted that at the current session the delegation of Colombia had circulated a working paper entitled "Some considerations concerning the utilization of the geostationary satellite orbit" (A/AC.105/C.2/L.200 and Corr.1) which is set out in annex III, section A, of the report of the Subcommittee. The Chairman noted that the sponsor of the working paper had made a detailed presentation of the document at the 590th meeting of the Subcommittee.

24. Some delegations welcomed the submission of the working paper by the delegation of Colombia and expressed the view that it would help to attain progress in the work on the subject of the geostationary orbit.

25. Some delegations expressed the view that the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee had a mandate from the General Assembly to consider questions relating to the use of the geostationary orbit with a view to elaborating legal principles on the question. Some delegations also expressed the view that the work should be complementary to the activities of the International Telecommunication Union (ITU). In that connection, the view was expressed that the Committee and its Legal Subcommittee should strengthen their cooperation with ITU.

26. The view was expressed that because the geostationary orbit was an integral part of outer space, the legal regime established by the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex), adequately covered activities in and related to the geostationary orbit. That delegation also believed that ITU had been successful in dealing with various aspects of the rational and equitable use of the geostationary orbit and that it was not appropriate for the Legal Subcommittee to engage in activities that might conflict with those of ITU and other international bodies.

27. The view was expressed that there was a need to establish a *sui generis* legal regime for regulating access to and the use of the geostationary orbit, which was a limited natural resource. Such a regime should guarantee equitable access to the geostationary orbit for all States, taking particular account of the needs of developing countries, including the equatorial countries due to their special characteristics. Since outer space had not so far been delimited, it could not be affirmed that the geostationary orbit was a part of outer space. That delegation considered that the new working paper submitted by Colombia was useful and that it enriched the debate in the Working Group on the geostationary orbit. In addition, that delegation noted that the special *sui generis* regime should also refer to the space debris issue.

28. The view was expressed that working paper A/AC.105/C.2/L.200 and Corr.1 should be restructured as a draft resolution to be ultimately adopted by the General Assembly. That delegation also expressed the view that the text of the draft should be divided into a preambular part and an operative annex that would contain a number of principles, including two new paragraphs: the first providing that the principles should serve as a guideline for the entire United Nations system, including ITU, with regard to the regulation of the geostationary satellite orbit; and the second relating to the settlement of disputes.

29. At the request of some delegations, the representative of ITU commented on the working paper from the perspective of ITU rules and regulations. That representative also responded to questions raised by some delegations and offered further explanations with regard to the a priori planning and coordination procedures employed by ITU, as well as resolution 18 adopted by the plenipotentiary conference of ITU, held at Kyoto, Japan, in 1994, referred to in the working paper.

30. Some delegations indicated that they would need more time to study the working paper with a view to making comments. Other delegations made the comments below with regard to the working paper.

**Title**

31. The view was expressed that the title of the working paper should be "Draft Principles Governing the Rational and Equitable Use of the Geostationary Satellite Orbit".

**Recommendation (a)**

32. The view was expressed that it was unclear what exactly the coordination procedures in the text referred to.

33. In reply, the sponsor of the working paper stated that that term referred to ITU coordination procedures as set out in the relevant ITU documents.

34. Some delegations expressed the view that the sponsor of the working paper and ITU should further coordinate their efforts in refining the text.

35. The view was expressed that the phrase "in respect of bands and services not planned by ITU" should be replaced by "in respect of bands and services not subject to a priori plans by ITU".

36. The view was expressed opposing the inclusion of notions such as developed countries and developing countries because it considered that the terms were too vague to be chosen as criteria and that the level of development of countries did not necessarily correspond to those of development in space industry; thus, the choice of such a criterion could give rise to inequitable results.

37. Some delegations expressed the view that the words "when a developed country and a developing country have equal claims to access to the same orbital position or neighbouring positions, or" should be deleted because the needs and interests of the developing countries might be better served by the words "when a country which has already had access and another which has not yet had access have equal claims". In response, the sponsor of the working paper stated that while in principle that proposal could be considered, the rationale behind using the term "developing countries" in the paper was explained by the fact that that term was used both in the relevant ITU documents and in the mandate of the Legal Subcommittee to consider questions relating to the geostationary orbit.

**Recommendation (b)**

38. The view was expressed that it was unclear to what the term "conditions" in the text referred.

39. In reply, the sponsor of the working paper stated that the term referred to the rules and regulations used in ITU documents.

**Recommendation (c)**

40. Some delegations expressed the view that, since the issue of space debris was already being considered by the Scientific and Technical Subcommittee, it was not appropriate to address the issue of space debris in the text.

41. The view was expressed that, because the problem of space debris was of particular importance to that matter, reference could be made to the term "non-functional objects" instead of "space debris".

42. In response, the sponsor of that working paper suggested that the term "space debris and" could be deleted.

43. The view was expressed that because the geostationary satellite orbit was a limited natural resource and must be used efficiently for the benefit of all humankind, it was important that efforts should be made to remove the spent satellites from the geostationary satellite orbit at the end of their useful lives.

44. At the conclusion of the debate, the sponsor of the working paper expressed his appreciation to all delegations that commented on the document and expressed the hope that those suggestions could be, in due course, communicated to him in writing so that they could be adequately taken into account.

45. The Working Group recommended that those delegations wishing to have certain provisions of working paper A/AC.105/C.2/L.200 and Corr.1 modified should consider submitting their proposals in writing, either to the sponsor or to the Working Group in the form of working papers, in order to facilitate the consideration of those proposals.

46. The Working Group recommended that the Secretariat should circulate to the delegations at the next session of the Working Group a compendium of relevant sections and/or documents referred to in working paper A/AC.105/C.2/L.200 and Corr.1 with a view to facilitating the debate on the working paper.

47. The Working Group recommended that the Secretariat, in cooperation with the ITU secretariat, should provide, for the next session of the Working Group, an analysis of the compatibility of the approach contained in working paper A/AC.105/C.2/L.200 and Corr.1 with the existing rules and procedures of ITU relating to the use of the geostationary orbit.

*Annex II*

## REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 5 (CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES)

1. On 18 March 1996, the Legal Subcommittee re-established its Working Group on agenda item 5.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1), which contained, in annex II, the report of the Chairman of the Working Group on agenda item 5 at that session. It also had before it a working paper entitled "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries" (A/AC.105/C.2/L.182/Rev.3), submitted at its current session by the delegations of Brazil, Chile, Colombia, Cuba, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela, and a working paper entitled "Declaration on international cooperation in the exploration and use of outer space for the benefit and in the interests of all States, taking into particular account the needs of developing countries" (A/AC.105/C.2/L.197/Rev.1), submitted at its current session by the delegations of France and Germany. Those working papers are contained in annex III, sections B and C, of the present report. In addition, the Subcommittee had before it an informal working paper entitled "Declaration of principles regarding international cooperation in the exploration and utilization of outer space for peaceful purposes for the benefit and in the interests of all States, taking into particular account the needs of developing countries" (A/AC.105/C.2/1995/CRP.5, as amended), submitted to the Subcommittee at its thirty-fourth session by the Chairman of the Working Group on agenda item 5. The informal working paper represented a merger based on the texts of working papers A/AC.105/C.2/L.182/Rev.2 and A/AC.105/C.2/L.197, with additional language from the Chairman, and is set out as an appendix to annex II of the report of the Subcommittee on its thirty-fourth session, in 1995 (A/AC.105/607 and Corr.1).

3. In his introductory statement the Chairman referred to the work of the Working Group during the previous session, in 1995, outlining the extensive and productive exchange of views that had occurred on the basis of working papers A/AC.105/C.2/L.182/Rev.2 and A/AC.105/C.2/L.197, which had provided the basis for further progress on the item. He expressed the hope that, with the introduction of the revised versions of those working papers (A/AC.105/C.2/L.182/Rev.3 and A/AC.105/C.2/L.197/Rev.1), further progress could be achieved at the current session.

4. A statement was made by the delegation of Brazil on behalf of the co-sponsors of working paper A/AC.105/C.2/L.182/Rev.3. The Working Group was informed of amendments and modifications that had been made to working paper A/AC.105/C.2/L.182/Rev.2 in the light of comments expressed during the previous session. The Working Group was also informed of the history and general goals of the document and of the premises underlying the concepts contained in the working paper.

5. A statement was made by the delegation of Germany on behalf of the co-sponsors of working paper A/AC.105/C.2/L.197/Rev.1. The Working Group was informed of the amendments and modifications that had been made to working paper A/AC.105/C.2/L.197 in the light of comments expressed during the previous session. The Working Group was also informed of the general goals of the document and of the premises underlying the concepts contained in the working paper.

6. Some delegations welcomed the revisions of the two working papers and indicated their support of the proposals contained therein. They looked forward to constructive discussions that could contribute to further progress in the Working Group.

7. Some delegations expressed the view that the co-sponsors of the two working papers should attempt to combine them into one. Some delegations expressed the view that the co-sponsors should first identify the similarities and differences in their texts, eliminate controversial paragraphs and elaborate on common paragraphs, with a view to arriving at a combined text.

8. The view was expressed questioning whether there was currently a need to elaborate either principles or a declaration regarding international cooperation in the exploration and utilization of outer space for peaceful purposes, in view of the extensive international cooperative activities currently taking place.

9. On the question of the organization of its work, pursuant to a recommendation by the Chairman, the Working Group agreed that first Brazil and then Germany, on behalf of the co-sponsors of the respective working papers, would present them on a paragraph-by-paragraph basis, allowing delegations the opportunity to offer their comments and suggestions.

**Working paper on consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries (A/AC.105/C.2/L.182/Rev.3)**

10. At the suggestion of the Chairman, the delegation of Brazil, on behalf of the co-sponsors, proceeded with a brief introduction of each preambular paragraph and each paragraph of the text set forth in the annex to working paper A/AC.105/C.2/L.182/Rev.3, in order to explain the rationale for those paragraphs, to provide some background on how they had been formulated, to highlight the changes made to the previous draft and to elicit comments from other delegations. That introduction, as well as the comments of other delegations, is set out in paragraphs 11-31 below.

**Title**

11. Some delegations expressed the view that the title of working paper A/AC.105/C.2/L.182/Rev.3 should be replaced with that of working paper A/AC.105/C.2/L.197/Rev.1. In reply, the view was expressed that changing the title of the draft declaration to correspond to the one contained in working paper A/AC.105/C.2/L.197/Rev.1 was acceptable, in principle, but would depend on the substance of the text contained in the annex.

**Preambular paragraphs**

12. The Working Group was informed that the first preambular paragraph had been modified based on comments made at previous sessions by removing references to specific articles of the Charter of the United Nations.

13. The view was expressed that the word "relevant" should be placed before the word "provisions" and that the words "pursuant to Article III of the 1967 Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies" should be included at the end of the sentence. In reply, the view was expressed that while, in principle, inclusion of those modifications was possible, specific references had been removed in response to the concerns raised by various delegations at previous sessions.

14. The Working Group was informed that the second preambular paragraph was the same as that in working paper A/AC.105/C.2/L.182/Rev.2.

15. The Working Group was informed that the third preambular paragraph had been modified by removing references to specific General Assembly resolutions.

16. The view was expressed that the words "on principles" should be deleted as they would limit the number of applicable General Assembly resolutions to those that set out principles relating to activities in outer space.

17. The Working Group was informed that the fourth preambular paragraph was the same as that in working paper A/AC.105/C.2/L.182/Rev.2.

18. The Working Group was informed that the fifth preambular paragraph had been modified slightly by replacing the words "strengthening and further developing" with the words "facilitating the application of".

19. Some delegations expressed the view that, because the fifth preambular paragraph used language from article I of the Outer Space Treaty, it was necessary to delete the additional language "taking into particular account the special needs of developing countries" from the text as it could be regarded as amending the Outer Space Treaty. The view was also expressed that similar language was also included in the sixth preambular paragraph. In reply, the view was expressed that removal of the additional language from the fifth preambular paragraph might be acceptable as long as the concept was reflected elsewhere in the working paper.

20. The Working Group was informed that the sixth preambular paragraph had been modified to provide for the General Assembly to adopt a "declaration" rather than "principles".

21. Some delegations expressed the view that the wording of the sixth preambular paragraph should be changed to that contained in working paper A/AC.105/C.2/L.197/Rev.1.

**Annex**

22. With regard to paragraph 1, the Working Group was informed that it referred to article I of the Outer Space Treaty.

23. With regard to paragraph 2, the Working Group was informed that the text was the same as that contained in section I, paragraph 1, of working paper A/AC.105/C.2/L.197/Rev.1.

24. With regard to paragraph 3, the Working Group was informed that it was based on Principle I, paragraph 2, of working paper A/AC.105/C.2/L.182/Rev.2. The words "States with" had been replaced with the words "All States, particularly those with". The Working Group was also informed that the words "in outer space science and technology, and in their applications" had been removed from the text.

25. With regard to paragraph 4, the Working Group was informed that it was based on section I, paragraph 3, of working paper A/AC.105/C.2/L.197/Rev.1, but that the words "cooperation in the exploration and use of outer space" from that paragraph had been replaced with the words "participation in international cooperation". The Working Group was also informed that paragraph 4 did not reflect the second sentence of paragraph 3 of section I of working paper A/AC.105/C.2/L.197/Rev.1.

26. With regard to paragraph 5, the Working Group was informed that the subparagraphs in that paragraph were based on elements from both working papers submitted at the 1995 session.

27. With regard to paragraph 6, the Working Group was informed that the text had been edited based on both working papers and that wording in the paragraph that could imply an interference with the sovereign rights of States to enter into cooperative ventures had been removed.

28. With regard to paragraph 7, the Working Group was informed that the text was similar to Principle V, paragraph 1, in working paper A/AC.105/C.2/L.182/Rev.2 but that the words "by present and future generations" had been added to the end of the paragraph.

29. With regard to paragraph 8, the Working Group was informed that it had been drafted along the lines of section III, paragraph 2, of working paper A/AC.105/C.2/L.197/Rev.1, but that the words "as well as organizations for development aid in industrialized" had been replaced with the words "organizations for development aid, and developed". The Working Group was also informed that the words "potential of space services, *inter alia*, through the exchange of results" had been replaced with the words "appropriate use of space services and the potential of international cooperation".

30. With regard to paragraph 9, the Working Group was informed that it was the same as section III, paragraph 3, of working paper A/AC.105/C.2/L.197/Rev.1.

31. With regard to paragraph 10, the Working Group was informed that it was essentially the same as Principle IV, paragraph 2, of working paper A/AC.105/C.2/L.182/Rev.2 but that the words "be encouraged" had been added, as well as the words "and to other initiatives in the field of international cooperation".

**Working paper on a declaration on international cooperation in the exploration and use of outer space for the benefit and in the interests of all States, taking into particular account the needs of developing countries (A/AC.105/C.2/L.197/Rev.1)**

32. At the suggestion of the Chairman, the delegation of Germany, on behalf of the co-sponsors, proceeded with a brief introduction of each paragraph of the text set forth in working paper A/AC.105/C.2/L.197/Rev.1, in order to explain the rationale for those paragraphs, to provide some background on how they had been formulated and to elicit comments from other delegations. That introduction, as well as the comments of other delegations, is set out in paragraphs 33-53 below.

**Preambular paragraphs**

33. The Working Group was informed that the addition of the preamble to the working paper was the most important change made to the document and that it provided the rationale for the working paper. Based on comments made by delegations at the previous session, the preamble reflected the constructive approach that those delegations had sought, thereby formalizing the working paper as a draft resolution to be adopted by the General Assembly. The Working Group was further informed that the preamble, in particular its first paragraph, had been modelled after the preamble in the Principles Relevant to the Use of Nuclear Power Sources in Outer Space, adopted by the General Assembly in its resolution 47/68 of 14 December 1992.

34. The view was expressed questioning the use of only the preamble of the Principles Relevant to the Use of Nuclear Power Sources in Outer Space as the model on which the preamble in the working paper had been based. That delegation was of the view that other resolutions, such as General Assembly resolution 2625 (XXV) of 24 October 1970, entitled "Declaration on Principles of International Law concerning

Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations", General Assembly resolution 3362 (S-VII) of 16 September 1975, entitled "Development and international economic cooperation", and General Assembly resolution 41/65 of 3 December 1986, entitled "Principles relating to remote sensing of the Earth from outer space", could also have been used as models. The view was also expressed that article I of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (General Assembly resolution 2222 (XXI), annex, of 13 December 1966), should have been the basis of the draft resolution, with the additional text appearing in that article, "irrespective of their degree of economic or scientific development," being added to the preamble. In reply, the view was expressed that there existed different approaches to drafting preambles to texts and that the working paper was based on one of the latest approaches, that which had been employed in the Principles Relevant to the Use of Nuclear Power Sources in Outer Space. The view was expressed that only the first and last preambular paragraphs of the draft resolution had been modelled after the preamble of those Principles.

35. The Working Group was informed that the second preambular paragraph, particularly the key terms "further strengthening" and "broad and efficient collaboration", indicated the core of the subject-matter, and that the sponsors of the working paper had built upon existing international cooperation in order to reflect the experience gained by that cooperation.

36. The Working Group was informed that the third preambular paragraph reflected the change that had occurred in international cooperation and gave another important reason why the draft resolution had been formulated.

37. The view was expressed that it was not clear what was meant by international cooperation "among States and international organizations". In reply, the view was expressed that the phrase was meant to refer to cooperation among States and also to cooperation among States and international organizations.

38. The Working Group was informed that the fourth preambular paragraph reflected the growing experience in space activities by States, which brought States to an equal footing, and that the international cooperation described in the annex reflected that situation.

39. The view was expressed that the fourth preambular paragraph should be further clarified. In reply, the view was expressed that the annex was based on the changing international political situation and on past and current experiences gained in space activities. Those experiences defined the scope of international cooperation in that area, and that was expressed in the second part of the annex, in which an attempt had been made to be precise and broad at the same time, and in the draft resolution as a whole, which was based on how the space-faring nations had learned to conduct space activities for the benefit of all States.

40. With regard to the sixth preambular paragraph, the view was expressed that the phrase "irrespective of their degree of economic or scientific development" should be added after the term "interests of all States", in order to bring the text in line with article I of the Outer Space Treaty.

**Annex**

41. The Working Group was informed that the form of the operative part of the draft resolution, contained in the annex, had basically remained the same in the new version of the working paper, with changes being made to reflect comments made on the first draft by delegations at the previous session.

**Part I**

42. With regard to paragraph 1 of part I of the annex, the Chairman noted that the view had been expressed that the phrase "irrespective of their degree of economic or scientific development" should be appropriately included in the preambular paragraphs; he added that the phrase was adequately reflected in paragraph 1. That delegation expressed the view that the phrase contained in article I of the Outer Space Treaty was important in different contexts and that it was as important in the context of the preambular paragraphs as it was in the context of paragraph 1 of part I of the annex.

43. With regard to paragraph 2, the Working Group was informed that, based on comments made at the previous session, the sequence of the sentences had been altered and that the term "resources" had been rendered more precise by the use of the terms "financial" and "technical". The Working Group was also informed that paragraph 2 was one of the most important, as its goal was the efficient allocation of scarce resources.

44. Some delegations expressed the view that the term "should", which connoted conditional international cooperation, should be replaced with the term "shall", which was more appropriate. In reply, the view was expressed that the term "shall" was the term that was normally used in international treaties, which the first paragraph of the annex cited; the rest of the text was intended to be a General Assembly resolution, in which the term "should" would be more appropriate.

45. The view was also expressed that an appropriate reference should be made to the dissemination of information and transfer of technology, after the term "applications".

46. With regard to paragraph 3, the Working Group was informed that the term "shall" had been replaced by the term "should", in order to make the text more precise.

**Part II**

47. The Working Group was informed that part II of the annex covered all possible aspects of international cooperation in the field of outer space and that it reflected the fact that both working papers currently before the Working Group had the same goals, making space technology and applications part of development strategies for States.

48. With regard to paragraph 2, the view was expressed that the reference to "financial and technical resources" was repetitive, in that it appeared in part I of the annex, which laid out the general elements of international cooperation, and therefore could be deleted from the second part. The view was also expressed that the reference to "financial and technical resources" should be maintained in view of ensuring the most effective and appropriate mode of cooperation. The view was further expressed that the criteria laid down in paragraph 2 gave the impression that the concept of "free choice", reflected in part II, paragraph 1, no longer applied and that, since international cooperation depended on the actual needs of the parties concerned, it was necessary to reflect that idea in the paragraph. The view was further expressed that the term "should" could be replaced by the term "shall". In reply, the view was expressed that the term "shall" would hinder free choice in selecting modes of cooperation.

49. The view was expressed that the sentence in paragraph 2 could be replaced by the following sentence: "States are free to determine all aspects of cooperation".

50. With regard to paragraph 3, the view was expressed that it was not clear what the phrase "consistency between national and international space activities" meant. In reply, the view was expressed that, in the first

place, the phrase did not refer to any legal principle and, secondly, it meant that the national activities that States conducted should not duplicate and overlap their international cooperative activities.

**Part III**

51. With regard to paragraph 1, the view was expressed that the reference to international law, the Charter of the United Nations and the Outer Space Treaty was redundant, since the reference had already been made, and should therefore be deleted. The view was also expressed that the reference should be retained even if it was redundant, because its deletion could cause confusion and controversy.

52. With regard to paragraph 3, some delegations expressed the view that the role of the Committee on the Peaceful Uses of Outer Space was not accurately reflected, since that body was more than a forum for the mere exchange of information on national and international space activities. They stated that the role of the Committee was not thus limited, since its mandate, both in the General Assembly resolutions on its establishment and in subsequent General Assembly resolutions, included other important tasks, such as the development of space law, that could also be reflected in paragraph 3, as well as in the identical paragraph in working paper A/AC.105/C.2/L.182/Rev.3. Those delegations expressed the view that paragraph 3 should be replaced with the following new paragraph:

> "The United Nations Committee on the Peaceful Uses of Outer Space should be strengthened in its role as a forum for the promotion of international cooperation and other activities in the field of the exploration and peaceful uses of outer space."

In reply, the view was expressed that the General Assembly resolutions on the establishment of the Committee had been general in nature, which went beyond the current task of the Working Group on agenda item 5. In addition, the paragraph included the word "as", which indicated a greater, and not restricted, role for the Committee. The view was expressed that the phrase "as a forum" was limiting in nature and that the phrase "among others" should be inserted after the term "role".

53. The Chairman of the Working Group expressed the view that the submission of the revised versions of working papers A/AC.105/C.2/L.182/Rev.3 and A/AC.105/C.2/L.197/Rev.1 constituted an important step forward in the development of the debate in the Working Group. The discussion on item 5 of the agenda, both in the plenary and in the Working Group, in particular the exchange of views between the co-sponsors of the two working papers, had significantly expanded the terms of reference of the debate. The working papers represented an extremely constructive effort and, with additional work, a common understanding and consensus could be reached. The Chairman urged the sponsors of both working papers to enter into informal consultations in an attempt to produce a combined text.

**Working paper submitted by the Chairman of the Working Group (A/AC.105/C.2/L.202)**

54. As a result of those consultations, the Chairman submitted a working paper entitled "Working paper submitted by the Chairman of the Working Group" (A/AC.105/C.2/L.202), which is set out in annex III, section D, to the present report.

55. The Chairman, while introducing the working paper, stated that it was the outcome of efforts made to consolidate the ideas presented in working papers A/AC.105/C.2/L.182/Rev.3 and A/AC.105/C.2/L.197/Rev.1. He added that agreement could not be reached on some elements of the text and that those elements had therefore been placed in square brackets. Some delegations welcomed the introduction of the Chairman's working paper which, in their view, would lead to progress in the work of the

Subcommittee on agenda item 5. The Chairman invited delegations to comment on the working paper. Those comments are set out in paragraphs 56-70 below.

**Preambular paragraphs**

56. With regard to the third preambular paragraph, some delegations expressed the view that it would be desirable to refer to other international agreements and principles relating to outer space, in addition to the Outer Space Treaty. The view was expressed that while the third preambular paragraph could indeed refer to other outer space agreements, the proper place to refer to principles relating to outer space would be the fourth preambular paragraph.

57. With regard to the fourth preambular paragraph, the view was expressed that it was necessary to add "of States" after "activities".

58. With regard to the fifth preambular paragraph, the view was expressed that the reference to "other international conferences" was questionable. The view was also expressed that that reference was missing in the French version of the report and that the solution might be either to conform the French version to the versions in the other languages or to delete the reference everywhere.

59. With regard to the seventh preambular paragraph, some delegations expressed the view that the term "made" should be replaced with either the term "gathered" or the term "gained".

60. With regard to the ninth preambular paragraph, the view was expressed that the word "all" should be added before the word "mankind".

**Annex**

61. With regard to paragraph 1, the view was expressed that in the second sentence the word "it" should be replaced with the phrase "international cooperation". Some delegations expressed the view that in the last sentence the term "should" should be replaced with the term "shall". In reply, the view was expressed that the use of the term "should" should be retained.

62. With regard to paragraph 2, the view was expressed that the term "should" should be replaced by the term "shall". The view was expressed that while the choice of the term "shall" or "should" in past documents on outer space was subject to long and difficult debate, it was necessary to keep in mind that in the formulation of the title of the agenda item under review, as mandated by the General Assembly, the term "should" had been used.

63. With regard to paragraph 3, the view was expressed that in the first sentence the term "utilization" should be replaced with the term "use" in order to conform to the relevant formulation of the Outer Space Treaty and that in the second sentence the words "for and in the" should be replaced with the word "and". Some delegations expressed the view that in the second sentence, after the words "should be given", the words "to the principle that the exploration and use of outer space shall be carried out for the benefit" should be inserted and that the current words "to the benefit for" should be deleted.

64. With regard to paragraph 4, the view was expressed that the current wording of the paragraph, especially its ending, was somewhat overly complicated and could be better edited.

65. With regard to paragraph 5, the view was expressed that the words "rational and" should be added after "considering the" and that the words "financial and technical" should be added after "allocation of". The

view was also expressed that the words "the need for technical assistance and" should be added before the words "efficient allocation of resources".

66. The view was expressed that the elements of cooperation contained in part III, paragraph 1, of working paper A/AC.105/C.2/L.197/Rev.1 should be added to the list of goals contained in that paragraph.

67. With regard to paragraph 6, some delegations expressed the view that the square brackets around the text should be removed because the mandate given to the Subcommittee by the General Assembly was wide enough to deal with the issues of preserving the space environment. In reply, other delegations expressed the view that that mandate did not specifically refer to environmental issues, that the current formulation of the paragraph did not even refer to international cooperation, which was the objective of the work under agenda item 5 and that article IX of the Outer Space Treaty referred to the environment of the Earth and not to the space environment. In reply, some delegations expressed the view that article IX should not be interpreted so narrowly. The view was expressed that the words "not to hinder" should be replaced with the words "to preserve". The view was also expressed that the word "activities" should be replaced with the word "cooperation". In reply, the view was expressed that that formulation might be viewed as a revision of the relevant provisions of the Outer Space Treaty.

68. With regard to paragraph 8, the view was expressed that that paragraph should be replaced with the formulation proposed with regard to part III, paragraph 3, of working paper A/AC.105/C.2/L.182/Rev.3 (see paragraph 52 above). The view was also expressed that the words "cooperation for" should be replaced with the words "international cooperation in".

69. With regard to the working paper as a whole, the view was expressed questioning the need or tangible benefit of the declaration proposed in the working paper and the legal and practical implications of such a document, which should be carefully considered in the light of clear provisions contained in article I of the Outer Space Treaty. That delegation nevertheless appreciated the efforts invested by participants of the informal consultations in the production of the working paper and stated that it was looking forward to continued consideration of the document and the ideas behind it.

70. In summing up the debate, the Chairman expressed the view that the production of the consolidated text by sponsors of working papers A/AC.105/C.2/L.182/Rev.3 and A/AC.105/C.2/L.197/Rev.1 was an extremely positive development, greatly facilitating the progress of the work on agenda item 5. The Chairman informed the Working Group that he would make minor amendments enhancing the consolidated text taking into account the views expressed by various delegations during the debate and that the revised text would be annexed to the report of the Subcommittee (see annex III, section D, of the report of the Subcommittee). The Chairman expressed the view that that text would become a basis for achieving further progress on agenda item 5 and he expressed the hope that the document could be finalized in the near future.

71. The Working Group held its final meeting on 28 March 1996, when it considered and approved the present report.

*Annex III*

DOCUMENTS ANNEXED TO THE REPORT

## A. Matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union

**Working paper submitted by Colombia (A/AC.105/C.2/L.200 and Corr.1 of 15 March 1996)**

### Some considerations concerning the utilization of the geostationary satellite orbit

I. In paragraph 4 of resolution 50/27, the General Assembly:

"*Endorses* the recommendations of the Committee that the Legal Subcommittee, at its thirty-fifth session, taking into account the concerns of all countries, particularly those of developing countries, should:

(a) ...

(b) Continue, through its working group, its consideration of matters relating to the definition and delimitation of outer space and to the character and utilization of the geostationary orbit, including consideration of ways and means to ensure the rational and equitable use of the geostationary orbit without prejudice to the role of the International Telecommunication Union" (our underlining).

In paragraph 6 of the same resolution, the Assembly "*Notes* that deliberations on the question of the geostationary orbit have been undertaken by the Legal Subcommittee as reflected in its report, on the basis of recent proposals which might provide a new and enhanced basis for future work", and on this point refers to the *Official Records of the General Assembly, Fiftieth Session, Supplement No. 20* (A/50/20), Sect. II.C (our underlining).

In paragraph 17, it

"*Also endorses* the recommendations of the Committee that the Scientific and Technical Subcommittee, at its thirty-third session, taking into account the concerns of all countries, particularly those of developing countries, should (our underlining):

"(a) Consider the following items on a priority basis:

"...

"(ii) Examination of the physical nature and technical attributes of the geostationary orbit and of its utilization and applications, including, *inter alia*, in the field of space communications, as well as other questions relating to space communications developments, taking particular account of the needs and interests of developing countries" (our underlining).

Examination of the above texts shows in a clear and irrefutable way:

(a) The competence of the Committee and its subcommittees to examine and comment on the subject of the geostationary satellite orbit, without prejudice to the role of the International Telecommunication Union, but also without renouncing that competence in any way;

(b) That the General Assembly wishes the subject to be considered and that such consideration should ensure the rational and equitable use of the geostationary satellite orbit;

(c) That the subject should continue to be considered, *inter alia*, taking into account the concerns of all countries, particularly those of developing countries;

(d) That the General Assembly has noted the consideration that was given to the subject in the Legal Subcommittee on the basis of recent proposals which might provide a new and enhanced basis for future work, and that there is a reference to the relevant documents, among which is the one submitted by Colombia on this matter, as follows from the references and the manner in which the negotiations and the deliberations on the subject in the General Assembly proceeded.

II. The Constitution of the International Telecommunication Union states in chapter VII, article 44, No. 196 paragraph 2, that:

> "In using frequency bands for radio services, Members shall bear in mind that radio frequencies and the geostationary-satellite orbit are limited natural resources and that they must be used rationally, efficiently and economically, in conformity with the provisions of the Radio Regulations, so that countries or groups of countries may have equitable access to both, taking into account the special needs of the developing countries and the geographical situation of particular countries" (our underlining).

The international norm quoted indicates expressly:

(a) That the geostationary satellite orbit is a limited natural resource;

(b) That it must be used rationally, efficiently and economically;

(c) That equitable access to this orbit must be permitted;

(d) That in order to permit this equitable access account must be taken of the special needs of the developing countries and the geographical situation of particular countries.

III. The International Telecommunication Union (ITU), through the Radio Regulations, has been setting guidelines for the use of the geostationary satellite orbit and radio frequencies in accordance with the principles in article 44 of the present Constitution, which reproduces the texts of other international instruments such as the Nairobi Convention of 1992.

Since 1977, orbital positions, frequencies and services in the geostationary orbit have been planned so as to guarantee in this manner equitable access for all countries.

At the present time the frequency bands and services planned for which countries have been allotted orbital positions are as follows:

| *Services* | *ITU Conferences* | *Frequency bands* |
|---|---|---|
| Fixed-satellite | WARC-ORB 88 | 4500-4800 MHz<br>6725-7025 MHz<br>10.70-10.95 GHz<br>11.20-11.45 GHz<br>12.75-13.25 GHz |
| Broadcasting-satellite | WARC-1977 | 11.7-12.5 GHz |
| | RARC 83 | 12.2-12.7 GHz |
| | WARC-ORB 85<br>WARC-ORB 88 | 17.3-17.8 GHz<br>14.5-14.8 GHz<br>17.3-18.1 GHz |

Consequently, since there are already universally accepted regulations for the above-listed services and bands, we consider that any new regulations should not affect this situation.

Nevertheless, still unplanned, for the purpose of allotting geostationary orbital positions, are a large number of frequency bands and services with regard to which we feel that some more precise indications should be given in order to guarantee equitable access to the geostationary orbit, in accordance with the above-mentioned legal mandates.

Access to the geostationary satellite orbit in the unplanned bands and services is governed at the present time by the principle of "first come, first served". This procedure could be considered an inequitable procedure when it is a question of the possibility of access to a specific orbital position, at the same time and with the use of the same frequencies by the developing countries and developed countries, or by countries which have not yet had access to the orbit as against those which have. At the present time, to resolve the problems that this situation gives rise to, there are coordination procedures which might cause extensive and costly operational limitations that are to the detriment of developing countries, which the international norms in force seek to protect.

This is the reason why we put forward the proposals to be found in paragraph 9 of document A/AC.105/C.2/L.192 of 30 March 1993.

Nevertheless, in the light of the discussions that have been held in this Subcommittee and bearing in mind the fact that any declaration on this point within the United Nations should be made "without prejudice to the role of the International Telecommunication Union", we take the opportunity to suggest that these principles should be applied to those frequency bands and services which have not yet been planned by ITU.

In line with this, we consider that any regulations on this subject should simplify the process of coordination by permitting the registration of satellites of developing countries or countries that have not yet had access to the orbit in preference to those that are already using it.

Finally, we consider that any pronouncement on the subject of the geostationary satellite orbit should refer also to the question of space debris interfering with the effective use of the orbit, and that a provision on this point should therefore be added.

To conclude, we consider that a draft text prepared by this Legal Subcommittee directed towards solving the problems discussed here in accordance with international norms should contain, basically, the following elements:

CONSIDERATIONS

1. The recognition that, in accordance with article 44 of the Constitution of the International Telecommunication Union, the geostationary satellite orbit and radio frequencies are limited natural resources that must be used rationally, efficiently, economically and equitably, taking into account the special needs of the developing countries and the geographical situation of particular countries;

2. The recognition that such equitable access to radio frequencies and to the geostationary satellite orbit must be guaranteed in practice;

3. The recognition that ITU has planned the use of certain frequency bands and services, guaranteeing orbital positions and frequencies to the various countries in the geostationary satellite orbit;

4. The recognition that there are extensive bands of frequencies and services that have not been subject to planning and that access to the orbit and to the frequencies for these services takes place in accordance with the principle of "first come, first served", derived from the regulations in force;

5. The recognition that, at the present time, the regulations concerning access to frequencies and the geostationary satellite orbit in respect of bands and services that have not been subject to planning by ITU may give rise to a series of situations involving difficult processes of coordination among countries, which could eventually lead to costly operational restrictions, especially for the developing countries, that would hamper and might even prevent the access of these countries to such resources;

6. The recognition that space debris plays a part in hindering the effective and rational use of the geostationary satellite orbit.

RECOMMENDATIONS

The following principles should be recommended:

(a) When the need arises for processes of coordination between countries, due to possible radio-electronic interference in respect of bands and services not planned by ITU using geostationary satellites, the countries involved in such coordination processes shall take into account the fact that access to the geostationary satellite orbit must take place, *inter alia*, in an equitable manner and that, consequently, when a developed country and a developing country have equal claims to access to the same orbital position or neighbouring positions, or when a country which has already had access and another which has not yet had access have equal claims, the developed country or the country which has already had access to the geostationary orbit shall, in the coordination procedure, offer all possibilities for the other country to have access to the orbital position and the frequencies desired, or have such access with the minimum of operational restrictions possible;

(b) The claim of countries to use frequencies and to occupy geostationary orbital positions in the cases provided for above shall be exercised under the conditions set forth in the ITU Radio Regulations and, in any event, account shall be taken of the provisions of Resolution 18 of the 1994 Kyoto Conference to guarantee effective use of the geostationary orbit;

(c) Best efforts shall be made by the satellite "launching State" to remove space debris and spent satellites from the geostationary satellite orbit to disposal orbits shortly before the end of the useful lives of satellites, in order to ensure the effective and economical use of this orbit.

## B. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

**Working paper: Germany and France (A/AC.105/C.2/L.197/Rev.1 of 19 March 1996)**

**Draft resolution**

### Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries

*The General Assembly,*

*Having considered* the report of the Committee on the work of its ___ session and the text of the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries as approved by the Committee and annexed to this report,

*Convinced of* the necessity and the significance of further strengthening international cooperation in order to reach a broad and efficient collaboration in this field for the mutual benefit and in the interests of all parties involved,

*Recognizing* the growing scope and significance of international cooperation among States and international organizations in the exploration and use of outer space for peaceful purposes,

*Considering* the practical experiences in international cooperative ventures, drawn by States with appropriate space capabilities and programmes in this field,

*Bearing in mind* the recommendations as contained in the report of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space of August 1982,

*Adopts* the Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries set forth in the annex to the present resolution.

## ANNEX

## Declaration on international cooperation in the exploration and use of outer space for the benefit and in the interests of all States, taking into particular account the needs of developing countries

### I. General elements of international cooperation

1. International cooperation in the exploration and use of outer space for peaceful purposes (hereafter "international cooperation") shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies. It shall be carried out for the benefit and in the interests of all States, irrespective of their degree of economic, social or scientific and technological development, taking into particular account the needs of developing countries.

2. International cooperation should promote the development of space science, technologies and applications, taking into particular account the needs of developing countries. It should strive to allocate financial and technical resources efficiently.

3. States are free to determine all aspects of their cooperation in the exploration and use of outer space on an equitable and mutually acceptable basis. By all means, contractual terms in such cooperative ventures should be fair and reasonable. They should be in full compliance with the legitimate rights and interests of the parties concerned as, for example, with intellectual property rights.

### II. Modes of cooperation

1. States are free to choose among different modes of cooperation, namely, between governmental or non-governmental cooperation, which can be effected on a global, regional or bilateral level. International cooperation can be carried out between industrialized and developing countries as well as among developing countries, including those with appropriate space capabilities or programmes, and among industrialized countries. All these activities can be effected on a commercial as well as on a non-commercial basis.

2. States should choose the most effective and appropriate mode of cooperation among these alternatives with the aim of an efficient allocation of financial and technical resources.

3. International cooperation should be based on durable, balanced and complementary foundations bearing in mind, *inter alia*, the consistency between national and international space activities. Thereby States can mutually benefit from international cooperation. This involves the sharing of experiences and learning together, taking into particular account the demand for special training and education activities. Cooperation should intensify and become more productive as countries, working together over a period of time, discover the benefits of such cooperation and develop mechanisms for reaching their common goal.

### III. Areas of cooperation

1. Activities involving the exploration and peaceful use of outer space which are conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space Including the Moon and Other Celestial Bodies, can be considered for international cooperation according to sections I and II above. Such activities are, for example:

(a) Remote sensing of the Earth from outer space including the observation of the Earth environment, management of natural and agricultural resources, oceanographic and meteorological observation and the prevention of natural disasters;

(b) The use of telecommunication services, including the improvement of the communications infrastructure in the fixed as well as mobile services, navigation and education services;

(c) Microgravity research and life science;

(d) Further manned and unmanned space exploration.

2. National and international agencies, research institutions, as well as organizations for development aid in industrialized and developing countries alike should consider the potential of space services, *inter alia* through the exchange of results and data for reaching their development goals.

3. The United Nations Committee on the Peaceful Uses of Outer Space should be strengthened in its role as a forum for the exchange of information on national and international activities in the field of cooperation for the exploration and use of outer space.

## C. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

**Working paper: Brazil, Chile, Colombia, Cuba, Egypt, Iraq, Mexico, Nigeria, Pakistan, Philippines, Uruguay and Venezuela (A/AC.105/C.2/L.182/Rev.3 of 22 March 1996)**

### Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the needs of developing countries

*The General Assembly*,

*Bearing in mind* the provisions of the Charter of the United Nations,

*Recalling* the provisions of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (hereafter "Outer Space Treaty"),

*Recalling also* the relevant General Assembly resolutions on principles relating to activities in outer space,

*Recalling also* the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and of other relevant international conferences on this subject,

*Desirous* of facilitating the application of the principle that the exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interest of all countries, irrespective of their degree of economic or scientific development, and shall be the province of mankind, and also taking into particular account the special needs of the developing countries,

*Adopts* the declaration on the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the needs of developing countries, set forth in the annex to the present resolution.

## ANNEX

### Declaration on the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interest of all States, taking into particular account the needs of developing countries

1. In accordance with the provisions of the Outer Space Treaty, the exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interest of all countries, irrespective of their degree of economic and scientific development, and shall be the province of all mankind.

2. International cooperation in the exploration and use of outer space for peaceful purposes (hereafter "international cooperation") shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Outer Space Treaty, and shall be carried out for the benefit and in the interest of all States, irrespective of their degree of economic, social, scientific and technological development, taking into particular consideration the needs of developing countries.

3. All States, particularly those with relevant space capabilities and with programmes for the exploration and utilization of outer space, should contribute to promoting and fostering international cooperation.

4. States are free to determine all aspects of their participation in international cooperation on an equitable and mutually acceptable basis.

5. International cooperation, while taking into particular account the needs of developing countries, should aim, *inter alia*, at the following goals:

(a) Promoting the development of space science and technology and of its applications;

(b) Fostering the development of relevant and appropriate space capabilities in interested States;

(c) Facilitating the exchange of expertise and technology among States;

(d) Allocating resources efficiently.

6. International cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned, including, *inter alia*, governmental and non-governmental; commercial and non-commercial; global, multilateral, regional or bilateral; and among countries in all levels of development. In this context, special attention should be given to the benefits, for developing countries and countries with incipient space programmes, deriving from international cooperation with countries with more advanced space capabilities, within a fair, reasonable and mutually acceptable basis.

7. All States should pursue their activities in outer space with due regard to the need to preserve the space environment, in such a way as not to hinder its continued exploration and utilization by present and future generations.

8. National and international agencies, research institutions, organizations for development aid, and developed and developing countries alike should consider the appropriate use of space services and the potential of international cooperation for reaching their development goals.

9. The Committee on the Peaceful Uses of Outer Space should be strengthened in its role as a forum for the exchange of information on national and international activities in the field of cooperation for the exploration and use of outer space.

10. All States should be encouraged to contribute to the programme on space applications and to other initiatives in the field of international cooperation in accordance with their space capabilities and their participation in the exploration and use of outer space.

## D. Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries

### Working paper submitted by the Chairman of the Working Group (A/AC.105/C.2/L.202 of 27 March 1996)

### Draft resolution

[Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries]

*The General Assembly*,

*Having considered* the report of the Committee on the work of its __ session and the text of the "Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries" as approved by the Committee and annexed to this report,

*Bearing in mind* the relevant provisions of the Charter of the United Nations,

*Recalling* notably the provisions of the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

*Recalling also* the relevant General Assembly resolutions relating to activities in outer space,

*Bearing in mind* the recommendations of the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, and of other international conferences relevant in this field,

*Recognizing* the growing scope and significance of international cooperation among States and between States and international organizations in the exploration and use of outer space for peaceful purposes,

*Considering* experiences gained in international cooperative ventures,

*Convinced* of the necessity and the significance of further strengthening international cooperation in order to reach a broad and efficient collaboration in this field for the mutual benefit and in the interests of all parties involved,

*Desirous* of facilitating the application of the principle that the exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of all countries, irrespective of their degree of economic or scientific development, and shall be the province of all mankind,

*Adopts* the [Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of All States, Taking into Particular Account the Needs of Developing Countries] set forth in the annex to the present resolution.

## ANNEX

[Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interests of all States, Taking into Particular Account the Needs of Developing Countries]

1. International cooperation in the exploration and use of outer space for peaceful purposes (hereafter "international cooperation") shall be conducted in accordance with the provisions of international law, including the Charter of the United Nations and the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. It shall be carried out for the benefit and in the interests of all States, irrespective of their degree of economic, social or scientific and technological development, and shall be the province of all mankind. Particular account should be taken of the needs of developing countries.

2. States are free to determine all aspects of their participation in international cooperation in the exploration and use of outer space on an equitable and mutually acceptable basis. Contractual terms in such cooperative ventures should be fair and reasonable and they should be in full compliance with the legitimate rights and interests of the parties concerned [as, for example, with intellectual property rights].

3. All States, particularly those with relevant space capabilities and with programmes for the exploration and use of outer space, should contribute to promoting and fostering international cooperation on an equitable and mutually acceptable basis. In this context, particular attention should be given to the benefit for and the interests of developing countries and countries with incipient space programmes stemming from such international cooperation conducted with countries with more advanced space capabilities.

4. International cooperation should be conducted in the modes that are considered most effective and appropriate by the countries concerned, including, *inter alia*, governmental and non-governmental; commercial and non-commercial; global, multilateral, regional or bilateral; and international cooperation among countries in all levels of development.

5. International cooperation, while taking into particular account the needs of developing countries, should aim, *inter alia*, at the following goals, considering their need for technical assistance and rational and efficient allocation of financial and technical resources:

(a) Promoting the development of space science and technology and of its applications;

(b) Fostering the development of relevant and appropriate space capabilities in interested States;

(c) Facilitating the exchange of expertise and technology among States on a mutually acceptable basis.

[6. All States should pursue their activities in outer space with due regard to the need to preserve the space environment in such a way as not to hinder its continued exploration and utilization by present and future generations.]

7. National and international agencies, research institutions, organizations for development aid, and developed and developing countries alike should consider the appropriate use of space applications and the potential of international cooperation for reaching their development goals.

8. The Committee on the Peaceful Uses of Outer Space should be strengthened in its role, among others, as a forum for the exchange of information on national and international activities in the field of international cooperation in the exploration and use of outer space.

9. All States should be encouraged to contribute to the United Nations Programme on Space Applications and to other initiatives in the field of international cooperation in accordance with their space capabilities and their participation in the exploration and use of outer space.

### E. Informal consultations on new items for the agenda

#### Unofficial background note by the Czech Republic

#### Review of existing norms of international law applicable to space debris

The purpose of the consideration of this proposed item would be to examine the problem of space debris from the perspective of existing international law which could be applicable to the phenomena of orbital debris. In this regard, the following questions should be examined:

Does the definition of "space object" as contained in the 1972 Liability Convention and the 1975 Registration Convention cover space debris?

Do provisions of the 1967 Outer Space Treaty concerning the avoidance of harmful contamination of outer space and adverse changes in the environment of the Earth apply to the problem of space debris?

Should the protection of ownership of space objects, and of their component parts, also be extended to space debris?

Should liability for damage caused to a space object and/or its crew by space debris depend on the proof of fault as in the case of a collision of two space objects?

These and other questions are of a legal nature and should be analysed and answered by legal experts.

The consideration of these questions would not amount to the drafting of new provisions but should serve to clarify the issues involved and help to improve the interpretation and application of the existing norms of international space law.

The time-frame for consideration of the suggested item could be limited to two sessions of the Subcommittee with the understanding that no more than two to three meetings would be devoted to it at each of these sessions. Thus the consideration of this item would not require any extension of the current duration of the Subcommittee's session.

## F. Informal consultations on new items for the agenda

### Unofficial background note by Chile

### Comparison of the norms of space law and those of international environmental law

### I. General background

Space technology has turned out to be one of the most efficient instruments for dealing with the problems which affect the environment. Various conferences and international treaties, both at the global and regional levels, have highlighted that link. Furthermore, the dramatic change in international relations has made itself felt by global strategic threats, among them, those concerning the environment.

With regard to international legislation, the most obvious consequence of the global change is the growing number of multilateral treaties covering new fields and realities which did not exist before or had not been discovered. It has brought about an interrelationship between the different components of the environment and the technological instrumentation (space technology applications) which cannot go unrecognized.

### II. Justification of the item

The background presented creates the need to know in depth the features and central elements of both branches of international law. Not only because of their practical interconnection, but also because they reflect the "common concern of humanity" and, in many cases, the problems arise in a sphere which is the "common heritage of all mankind". Likewise, the destiny of present and future generations, within the context of sustainable development, is embodied, in a normative sense and with nuances, in the relevant instruments of space and environmental law.

An exact knowledge of the relevant dispositions and key ideas could facilitate the adoption of new conventions containing an all-embracing point of view or make possible a more precise legal interpretation of the existing instruments in tune with the global requirements.

### III. Procedure to be followed

The schedule for the examination of this item could consist of the following stages:

(a) A comparative study by the Office for Outer Space Affairs on the central points in both branches of law. In this study, the Office could be assisted by experts who could be provided by various delegations;

(b) A request by the Secretary-General of the United Nations for information from Member States regarding national and international instruments to which they are party, and regarding the possibility of creating a common legal framework to serve as reference for broaching more efficiently the problems that "shall be the province of all mankind" (Article 1.1 of the Outer Space Treaty);

(c) In the light of the above, the comparative examination proper could begin within the Legal Subcommittee without prejudice to the courses of action to be followed once the exercise has been completed.

## G. Informal consultations on new items for the agenda

### Unofficial background note by Mexico

### Review of the status of the five international legal instruments on outer space

A review of the status of the international agreements relating to activities in outer space immediately reveals that many States have not ratified these instruments. As an indication, a table summarizing information on ratification of the individual instruments is given below.

| | Ratifications | Signatures |
|---|---|---|
| 1967 Outer Space Treaty | 93 | 27 |
| 1968 Agreement on Rescue | 83 | 25 |
| 1972 Convention on International Liability | 76 | 25 |
| 1975 Convention on Registration | 39 | 4 |
| 1979 Agreement on the Moon | 9 | 5 |

*Source*: A/AC.105/C.2/1996/CRP.2.

This information is a matter for concern because it reflects the limited application of the legal instruments relating to outer space. The object of this proposal is preparation of a preliminary document compiling the opinions of COPUOS delegations on this situation, as well as consideration of the advisability of devising some kind of multilateral strategy to achieve a greater commitment of States to the existing legal instruments. New subjects such as the one covered by this proposal can be studied at the current session of the Legal Subcommittee.